IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7322 OF 2006

Dr.Shaikh Ziz-Ur-Rasheed Md.Saleem & Ors...Petitioners

V/s.

Municipal Corpn.for Malegaon City .
(Through Commissioner) and another ..Respondents

Mr.Anilkuamar Patil for the Petitioners.

Mr.S.M. Sabrad for Respondent No.1.

Mr.P.P. Kakade, AGP for Respondent No.2.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 28TH MARCH, 2007.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioners are co-owners of the land which is the subject matter of this Petition, have prayed to this Court seeking a relief for a declaration that the said plots of land are released from reservation. In the development plan the land was reserved for various purposes. On the expiry of the period of ten years, the Petitioners caused a notice to be served on 7.3.2005 on the Planning Authority. Inspite of that notice, no steps were

taken within six months as required by Section 127 of the M.R.T.P. Act. It is therefore contended on behalf of the Petitioners that irrespective of the fact that a new plan is under preparation, their vested right cannot be defeated in the absence of the Respondents taking steps to acquire the land.

3. Reply has been filed on behalf of the Respondents. It is pointed out that a new draft development plan of 2002 is under consideration of the Regional Development Minister and on account of this, Respondent No.1 could not initiate any steps. In this behalf, it is submitted that as the new development plan is under preparation, the said notice lapses.

4. We have heard the learned counsel for the parties. Subsequent to the judgment of the Supreme Court in *Bhavnagar University vs. Palitane Sugar Mills Pvt. Ltd. AIR 2003 S.C. 511.* In *Baluram Dhondiba Salokhe vs. Kolhapur Municipal Corporation 2003 (3) MH.L.J. 820*, a Division Bench of this Court has held that a right accrues in favour of the Petitioner. Once this right accrues the mere fact that the another plan is under preparation or new plan has been notified, is of no consequence and consequently the Petition will have to be allowed.

5. In the light of above, Rule is made absolute in terms of prayer clause (b) with no order as to costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)